IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Criminal Jail Appeal No. 971 of 2001

Jiwan Singh ……Appellant

(In jail)

Versus

State of Uttaranchal ……Respondent

Shri Rajendra Kotiyal, learned Amicus Curaie for the Appellant.
Shri Nandan Arya, learned A.G.A. for the State.

Date of decision: 10th May, 2005

For the approval of:

Hon'ble Mr. Justice Irshad Hussain
Hon'ble Mr. Justice Prafulla C. Pant

- Whether the order/judgment should be sent to the reporters for reporting ? (Yes)

- Whether the reporters be allowed to see the Judgment? (Yes)

Reserved

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Corum: Hon Mr. Justice Irshad Hussain
Hon Mr. Justice Prafulla C. Pant

This Criminal Appeal, preferred under Section 374 (2) read with Section 383 of Code of Criminal Procedure, 1973 (herein after for brevity Cr.P.C.), is directed against judgment and order dated 27.01.2001, passed by the then learned Sessions Judge, Pithoragarh in Sessions Trial No. 23 of 1999, whereby appellant has been convicted under Section 304 Part- I of Indian Penal Code, 1860 (herein after for brevity I.P.C.) and sentenced to life imprisonment.

2. We heard Shri Rajendra Kotiyal, Amicus Curaie, for the appellant and learned Additional Government Advocate at length.

3. Before narrating the facts of this case, it is pertinent to mention here that before the commission of crime in question, earlier also appellant Jiwan Singh, was convicted under Section 304 of I.P.C., for commission of culpable homicide, not amounting to murder, wherein he was charged for killing his wife and stood trial in

Sessions Trial No. 19 of 1996. In said case, he was convicted on 30.10.1996 by the learned Sessions Judge, Pithoragarh but appears to have been given benefit of Probation of Offenders Act, 1958. This time, after three years, for his yet another act, now he stood trial for culpable homicide, not amounting to murder of his own married daughter.

4. In brief, prosecution story is that Smt. Bimla (deceased) was married daughter of the appellant who had come to her parents house about fifteen days before the date of the incident. On 06.04.1999, at about noon, appellant Jiwan Singh came in a drunken state from Wadda to his village Lelu and started hurling abuses against the in-laws of his daughter Bimla (deceased). The deceased objected to it. On this, appellant Jiwan Singh started beating his daughter and dragged her to a room and poured kerosene oil on her and set her on fire. The other children of the appellant P.W.1 Kumari Maya (daughter of the appellant), witnessed the incident and started crying from outside the room. On this, several villagers collected and immediately broke open the door and found that appellant Jiwan Singh, lying in a drunken stated under a cot while Bimla Devi (deceased) was lying with burn injuries. When the villagers entered into the room, appellant attempted to run away but was caught then and there. The villagers took out Bimla Devi and rushed her to District Hospital, Pithoragarh. On fifteenth day of the incident, Bimla Devi succumbed to the burn injuries and died. The deceased was a witness in the earlier Sessions Trial, which related to killing by appellant of his own wife. First Information Report (Exh.

A-2) was lodged on the very day i.e. on 06.04.1999 at about 5:10 P.M. with Police Station Kotwali, Pithoragarh by Deepa Giri P.W. 4 (Pradhan of village Lelu). On its basis, Check Report (Exh. A-3) was prepared and an entry was made at serial No. 26 in the General Diary (copy of Extract Exh. A-4). Initially the crime was registered against the appellant under Section 326 of I.P.C. and was investigated by Sub-Inspector Anand Lal (P.W. 5). He recorded the statements of witnesses under Section 161 of Cr.P.C. and prepared Site Plan (Exh. A-6). He further collected from the site, a plastic jar can, a match box, broken bangles, a DANDA and parts of burnt clothes and prepared Memo (Exh. A-7). The Investigating Officer on 20.04.1999, submitted chargesheet (Exh. A-8), against the appellant for his trial under Section 326 I.P.C. Meanwihle, Bimla Devi remained admitted for her treatment in District Hospital, Pithoragarh. On 23.04.1999, information was received in the Police Station that Smt. Bimla Devi has succumbed to the injures, on which an entry in the General Diary (Exh. A-9) was made and crime was converted into one under Section 304 I.P.C. and the same was re-investigated. The Inquest Report (Exh. A-10) was prepared by Sub-Inspector, Om Pal Singh on the very day i.e. on 23.04.1999. After preparing diagram of the dead body (Exh. A-11), Police form No. 13 (Exh. A-12), letter of the Chief Medical Officer, requesting for post-mortem examination (copy of letter Exh. A-13), the dead body was sent for autopsy.

5. Dr. Chandra Mohan Singh Dhami (P.W. 3) along with Dr. K.S. Mehta, conducted the post-mortem examination on the same day i.e. 23.04.1999 at 5:15 P.M. and prepared their report (Exh. A-1). They recorded that

the dead body was of an average built female of 20 years. Pugilistic attitude of all limbs present. Decomposition nill. Following ante-mortem injuries were recorded by the Medical Officer

1. **Ist to Vth Degree burn injuries were present all over the body except scalp, sole and toes of both feet. Redness was present on the base of injuries. The skin was teathered and charring and cracked along with muscles at different places. Slugh and pus was present at multiple places.**

On internal examination, membranes and brain found congested, Pleura found congested, lungs found congested. In the heart, right chamber was full and left chamber empty. Perietoneal cavity congested. Gall bladder and liver congested. Small intestine congested, with pasty material and gases. Large intestine congested with faecal matter and gases. Pancreas and spleen congested. Kidney congested. Urinary bladder empty. Date and time of the death has been recorded to be 23.04.1999 at 1:20 P.M., as the death had taken place in the hospital. In the opinion of the Medical Officer, cause of death was shock and septicemia as a result of ante-mortem injuries.

6. The Investigating Officer submitted supplementary charge sheet (Exh. A-14) for the trial of appellant for allegedly committing offence punishable under Section 304 I.P.C. The concerned Magistrate, after registering the case and giving necessary copies to the appellant,

committed the case to the Sessions Judge. After hearing the parties, a charge relating to offence, punishable under Section 304 I.P.C. was framed against the appellant on 04.08.1999 by the learned Sessions Judge, Pithoragarh, to which appellant pleaded not guilty and claimed to be tried. Thereafter, on behalf of the prosecution, P.W. 1 Kumari Maya (daughter of the appellant), P.W. 2 Jagdeesh Singh (minor son of the appellant) both eye-witnesses, P.W. 3 Dr. Chandra Mohan Singh Dhami (who conducted the post-mortem examination along with Dr. K.S. Mehta), P.W. 4 Smt. Deepa Giri (village Pradhan and informant) and P.W. 5 Sub-Inspector Anand Lal were examined. The oral and documentary evidence was put to the appellant who alleged it to be false. At the end of his reply recorded under Section 313 of Cr.P.C., appellant admitted that he did take alcohol at Wadda. Learned Sessions Judge, Pithoragarh, after hearing the parties and perusing the evidence on record found the appellant guilty of the offence, punishable under Section 304 Part-I I.P.C. and accordingly convicted and sentenced to him life imprisonment. Aggrieved by which this appeal was preferred.

7. The First Information Report (Exh. A-2) was recorded on 06.04.1999 at 17:10 hrs. The incident is said to have taken place on 06.04.1999 at 2:30 P.M. as such the report was lodged within a period of two hours and 40 minutes with the Police Station situated at 8 Kms away from the village. As such in our opinion, the First Information Report of the incident was lodged without any unreasonable delay.

8. From the ante-mortem injures, as mentioned earlier read with statement of P.W.3 Dr. Chandra Mohan

Singh Dhami, it is established that Smt. Bimla Devi died due to shock and septicemia as a result of ante-mortem burnt injuries. The statement of eye-witness P.W. 1 Kumari Maya Devi (daughter of the appellant) and that of P.W. 2 Jagdeesh Singh (Son of the appellant), gets corroborated from aforesaid post-mortem report (Exh. A-1). P.W. 1 Kumari Maya has stated on oath that appellant is her father. She further stated that some four years before the incident, appellant killed Govindi Devi (mother of the witness and wife of the appellant). This witness also states that on 06.04.1999, when she was at home with her married sister Bimla Devi (deceased) and brother Jagdeesh Singh, at about noon, appellant came in a drunken state and started beating Bimla Devi (deceased). She further states that he (appellant) dragged Bimla to a room and set her on fire. This witness further stated that her father (appellant) was caught by the villagers when he attempted to flee. P.W. 1 Maya further states that the villagers took Bimla immediately to hospital where she died on the fifteenth day of the incident. P.W. 2 Jagdeesh Singh (minor son of the appellant), corroborates the statement of her sister P.W. 1 Kumari Maya. He categorically states that on the date of the incident, at about noon, his father (appellant) came in a drunken state and started hurling abuses at the in-laws of Bimla Devi to which she objected. This witness further states that his father (appellant) there after started beating his sister (deceased). P.W. 2 Jagdeesh Singh further states that appellant thereafter dragged the deceased to a room and closed the room from inside. The witness also corroborate the fact that the door was broke open but by then his sister Bimla Devi was lying with burn injuries and appellant was lying under the cot.

9. The ocular account of the incident given by the above two siblings gets corroborated from the statement recorded by the dying declaration and statement recorded under Section 161 Cr.P.C. by the Investigating Officer P.W.5 Anand Lal. P.W. 5 Sub-Inspector Anand Lal, has stated that on the very day of the incident, he recorded the statement of Smt. Bimla Devi in the hospital. Exh. A-5, the dying declaration of the deceased is being reproduce as under:-

^^ esjs firk thou flag vkt 'kjkc T;knk fi;s FkkA eSusa [kkuk cuk j[kk Fkk fd esjs firk us esjs lkFk >xM+k fd;k o v;kj ds MUMs ls eq>s cqjh rjg ls ekjk ftlls esjh pwM+h;kW Hkh VwV xbZA eSa Hkkx dj xksB esa xbZ rks esjs firk thou flag us ogkW ls Hkh eq>s MUMs ls cqjh rjg ls ekj ihV dj ?kk;y fd;k vkSj vUnj dej esa ys tkdj cUn dj fn;k vkSj njokts dh dqUMh yxk nh vkSj esjs Åij 5 yh0 dh dkyh tjhdsu ls feV~Vh dk rsy mM+sy fn;k vkSj ekfpl tykdj esjs diM+ksa esa vkx yxk nhA eSa fpYYkk;h rks esjh cfgu ek;k o xzke iz/kku nhik fxjh] clUr flag] y{eh nsoh us njoktk rksM+dj o vU; xkWo okyksa us dEcy o ikuh Mkydj eq>s cpk;k vkSj vLirky yk;sA ;g ? kVuk 06-04-1999 ds le; <kbZ cts fnu dh gSA esjh mez 21 o"kZ gS vkSj bUVj ikl gwWA esjs vykok esjs ?kj esa rhu cgus o ,d HkkbZ Hkh ?kVuk ds fnu ?kj esa gh FksA esjs firk us eq>s esjh llqjky ls ,d ekg igys cqykdj yk;s FksA esjs firk us eq>s tku ls ekjs dh fu;r ls esjs Åij feV~Vh rsy Mkydj vkx yxkbZ gSA eSa vius c;ku lkspo le>dj fcuk fdlh ds cgdkos esa vkdj ns jgh gwWA

10. In view of the statements of eye-witnesses, and dying declaration as discussed above, we are in agreement with the learned Trial Court that the prosecution has been successful in proving the charge of offence, punishable under Section 304 (Part-I) I.P.C. against the appellant.

11. Learned Amicus Curaie for the appellant argued that the investigation Officer has no right to convert the case from 326 I.P.C. to 304 I.P.C. as he states that he had submitted earlier chargesheet under Section 326 I.P.C. against the appellant. We have examined the submission in the light of the evidence on record. It appears that before that chargesheet could reach to the learned Magistrate, Smt. Bimla Devi succumbed to the injuries and the crime was re-investigated and supplementary chargesheet under Section 304 I.P.C was submitted against the appellant. The earlier chargesheet, appears to have been signed by the Investigating Officer on 20.04.1999, in connection with the present crime but since the same had not reached the court and meanwhile the injured had died, the case appears to have been rightly converted into one under Section 304 I.P.C. and fresh chargesheet (Exh. A-14) was submitted by the Investigating Officer on 27.04.1999. We have already discussed above that Smt. Bimla Devi succumbed to the injuries on 23.04.1999. This chargesheet (Exh. A-14) on which the impugned trial started was presented before the Chief Judicial Magistrate on 15.05.1999 and the endorsement made by the Chief Judicial Magistrate on Exh. A-14 is clear to this effect by which he has directed to register the subsequent chargesheet (Exh. A-14).

12. On behalf of the appellant, it is further contended that suicide by the deceased cannot be ruled out. In our opinion, the contention does not carry any force. It would be nothing but presumption and surmise if we accept the contention that the deceased might have committed suicide for the reason that apart from the ocular evidence of P.W. 1 Kumari Maya and P.W. 2 Jagdeesh Singh and the dying declaration (Exh. A-5) of the deceased also shows that all the three children have named appellant as to what he has done under the influence of alcohol. It is not the case of appellant that his own children are enemical to him. Rather under Section 313 Cr.P.C., he himself admits that he had taken alcohol on the date of the incident at Wadda. He is unable to explain ho his daughter died in his house. In such circumstances, learned Trial Court has rightly believed the eye account given by P.W. 1 Kumari Maya and P.W. 2 Jagdeesh Singh (both children of the appellant).

13. Lastly, it is argued on behalf of the appellant that P.W. 4, Deepa Giri has stated that by the time she reached at the place of occurrence, the villages have already broken the door. As such she had not witnessed the incident. From the evidence on record, it is clear that P.W. 4 Smt. Deepa Giri is village Pradhan who informed the police about the incident and lodged the First Information Report. She has only stated in her examination that on 06.04.1999 at 2:30 P.M., she heard commotion and rushed towards the appellant’s house when she found after entering into the room that Bimla Devi was lying with burn injuries. She has given an eye account of the incident after she reached there regarding

condition of the deceased and drunken state of the appellant. She is not an eye-witness of what happened before she heard the commotion. As such, It makes the prosecution story, as narrated by P.W. 4 Deepa Giri, all the more natural as she has narrated the part of the prosecution story which she herself witnessed.

14. In the above circumstances and for the reasons as discussed above, we are in full agreement with the learned Sessions Judge that the appellant has committed offence punishable under Section 304 (Part-I) of I.P.C. and in view of his previous conviction, he is rightly been sentenced to life imprisonment. Therefore the appeal is liable to be dismissed. The same is dismissed.

(Prafulla C. Pant, J.) **(Irshad Hussain, J.)**

Dt: 10th May, 2005
Sweta